



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2012-0984; FRL-9904-83-Region 9]

Revisions to the Arizona State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action under the Clean Air Act to approve a revision to the Arizona State Implementation Plan (SIP). This revision concerns particulate matter emissions from dust generating operations that do not already have a permit within the Phoenix planning area. We are approving a state statute that requires the Arizona Department of Environmental Quality to develop and adopt a general permit that specifies episodic best management practices that are to be implemented by certain dust-generating activities.

DATES: This rule is effective on [Insert date 60 days from the date of publication in the Federal Register] without further notice, unless EPA receives adverse comments by [Insert date 30 days from the date of publication in the Federal Register]. If we receive such comments, we will publish a timely withdrawal in the Federal Register to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA-

R09-OAR-2012-0984, by one of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.
2. E-mail: steckel.andrew@epa.gov.
3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to

consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947-4125, vineyard.christine@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

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I. The State's Submittal

A. What statute did the State submit?

Table 1 lists the Arizona statute we are approving along with the date that it came into effect and the date it was submitted by the Arizona Department of Environmental Quality (ADEQ) as a revision to the Arizona SIP.

Table 1 - Arizona Statute

Statute No.	Statute Title	Effective Date	Submitted
Arizona Revised Statutes (ARS) section 49-457.05 (only A, B, D, and I)	Dust action general permit; best management practices; applicability; definitions	07/20/11	05/25/12

ADEQ included the statute addressed in this document in the submittal of Maricopa Association of Government's (MAG's) *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area (May 2012)* ("MAG Five Percent Plan"). On

July 13, 2012, EPA determined that the submittal of Arizona Revised Statutes (ARS) section 49-457.05 (only A, B, C, D, and I) met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review. On September 26, 2013, ADEQ withdrew paragraph C of ARS 49-457.05 from further consideration as part of the Arizona SIP.

B. Are there other versions of this statute?

There is no previous version of 49-457.05 in the SIP.

C. What is the purpose of the submitted statute?

Particulate matter (PM) contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control PM emissions. The new statute obligates ADEQ to develop and issue a dust action general permit for certain regulated activities within the Phoenix planning area, which is designated as a "serious" nonattainment area for the national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM_{10}). Under the statute, the general permit must specify the Best Management

Practices (BMPs) necessary to reduce or to prevent PM₁₀ emissions as soon as practicable before and during a day that is forecast by ADEQ to be at high risk of dust generation. The statute applies to the Phoenix planning area PM₁₀ nonattainment area, which is classified as "serious". The specific BMPs and other requirements are contained in the dust action general permit itself, which ADEQ adopted and included as appendix C, exhibit 3 of the MAG Five Percent Plan. EPA will take action on the dust action general permit in a separate rulemaking. EPA's technical support document (TSD) has more information about this statute.

II. EPA's Evaluation and Action

A. How is EPA evaluating the statute?

Generally, SIP requirements must be enforceable (see section 110(a) of the Act) and must not modify the SIP inconsistent with sections 110(l) and 193.

Guidance and policy documents that we use to evaluate enforceability requirements consistently include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 Federal Register Notice," (Blue Book), notice of availability published in the May 25, 1988 Federal Register.

2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
3. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
4. "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994).
5. "PM-10 Guideline Document," EPA 452/R-93-008, April 1993.

B. Does the statute meet the evaluation criteria?

We believe this statute is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

C. Public comment and final action.

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted statute because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it

in advance. However, in the Proposed Rules section of this Federal Register, we are simultaneously proposing approval of the same submitted statute. If we receive adverse comments by [Insert date 30 days from date of publication in the Federal Register], we will publish a timely withdrawal in the Federal Register to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on [Insert date 60 days from date of publication in the Federal Register]. This will incorporate this statute into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those

requirements would be inconsistent with the Clean Air Act;
and

- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Particulate matter, Reporting and recordkeeping requirements.

Dated: December 16, 2013.

Jared Blumenfeld,
Regional Administrator,
Region IX

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart D - Arizona

2. Section 52.120 is amended by adding paragraph

(c)(157)(i)(A)(10) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(157) * * *

(i) * * *

(A) * * *

(10) Arizona Revised Statutes (West, 2012 Cumulative Pocket Part): Title 49 (the environment), chapter 3 (air quality), article 2 (state air pollution control), section 49-457.05 ("Dust action general permit; best management practices; applicability; definitions"), excluding paragraph C and paragraphs E, F, G, and H.

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